

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

NICHOLAS ELIAS KEMP,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-20-296-G
)	
LOGAN COUNTY SHERIFF'S DEPARTMENT et al.,)	
)	
)	
Respondents.)	

ORDER

Petitioner, a state prisoner appearing pro se, brought this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell for initial proceedings.

On April 10, 2020, Judge Purcell entered a Report and Recommendation (Doc. No. 9), in which he recommended that this action be dismissed without prejudice based on Petitioner's failure to exhaust state court remedies. In the Report and Recommendation, Judge Purcell advised Petitioner of his right to object to the Report and Recommendation by April 30, 2020. Judge Purcell also advised Petitioner that a failure to timely object would constitute a waiver of his right to appellate review of the factual findings and legal conclusions contained in the Report and Recommendation.

To date, Petitioner has not filed an objection to the Report and Recommendation or requested an extension of time to do so. Accordingly, the Report and Recommendation (Doc. No. 9) is ADOPTED in its entirety. This action is DISMISSED without prejudice. A separate judgment shall be entered.

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the Court to issue or deny a certificate of appealability when it enters a final order adverse to a petitioner. Section 2253 of Title 28 of the United States Code instructs that a certificate of appealability may issue only if Petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Upon review, the Court concludes that the requisite standard is not met in this case. Thus, a certificate of appealability is DENIED.

IT IS SO ORDERED this 11th day of May, 2020.



CHARLES B. GOODWIN
United States District Judge